



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2017-0791]

RIN 1625-AA00

Safety Zone; Weskeag River, South Thomaston, ME

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the navigable waters within 50-yards of either side of the Route 73 Weskeag Bridge, at mile 0.1 on the Weskeag River, in South Thomaston, Maine. The safety zone is necessary to protect personnel, vessels, and the marine environment from the potential hazards created by the demolition, subsequent removal, and replacement of the Route 73 Weskeag Bridge. When enforced, this regulation prohibits entry of vessels or people into the safety zone unless authorized by the Captain of the Port (COTP), Sector Northern New England or a designated representative.

DATES: This rule is effective from October 1, 2017 through December 1, 2017.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2017-0791 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email LT Matthew Odom, Waterways Management Division, U.S. Coast Guard Sector Northern New England, telephone 207-347-5015, e-mail Matthew.T.Odom@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
COTP	Captain of the Port
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

On July 27, 2017, Sector Northern New England was made aware of the Route 73 Weskeag Bridge replacement project, which spans the Weskeag River in South Thomaston, Maine. The COTP Sector Northern New England has determined that the potential hazards associated with the bridge replacement project will be a safety concern for anyone within the work area.

The project is scheduled to begin on October 1, 2017 and be completed by December 1, 2017. During this project, removal and replacement of the bridge will take place. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. The safety zone will be enforced during different periods during the bridge demolition or when other hazards to navigation arise during the new bridge construction. The Coast Guard will issue a Broadcast Notice to Mariners via marine channel 16 (VHF-FM) 24 hours in advance to any period of enforcement or as soon as practicable in response to an

emergency. If the project is completed prior to December 1, 2017, enforcement of the safety zone will be suspended and notice given via Broadcast Notice to Mariners.

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM with respect to this rule because doing so would be impracticable and contrary to the public interest. The late finalization of project details did not give the Coast Guard enough time to publish an NPRM, take public comments, and issue a final rule before the construction work is set to begin. It would be impracticable and contrary to the public interest to delay promulgating this rule as it is necessary to respond to the potential safety hazards associated with the bridge replacement project beginning on October 1, 2017.

We are issuing this rule, and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making it effective less than 30 days after publication in the **Federal Register**. For reasons stated in the preceding paragraph, delaying the implementation of this rule would be impractical.

III. Legal Authority and Need for Rule

The legal basis for this temporary rule is 33 U.S.C. 1231. The COTP Sector Northern New England has determined that potential hazards associated with the bridge replacement project starting on October 1, 2017 and continuing through December 1, 2017 will be a safety concern for anyone within the work zone. This rule is needed to protect personnel, vessels, and

the marine environment within the safety zone while the bridge replacement project is completed.

IV. Discussion of the Rule

This rule establishes a safety zone from October 1, 2017 through December 1, 2017. The safety zone will cover all navigable waters from surface to bottom of 50 yards to either side of the Weskeag Bridge. The duration of the zone is intended to protect people, vessels, and the marine environment in these navigable waters during the bridge replacement project. When enforced, no vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

The Coast Guard will notify the public and local mariners of this safety zone through appropriate means, which may include, but are not limited to, publication in the Federal Register, the Local Notice to Mariners, and Broadcast Notice to Mariners via marine Channel 16 (VHF-FM) in advance of any scheduled enforcement period. The regulatory text we are enforcing appears at the end of this document.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, it has not been reviewed by the Office of

Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive order 13771.

The Coast Guard has determined that this rulemaking is not a significant regulatory action for the following reasons: 1) The safety zone only impacts a small designated area of the Weskeag River, 2) the zone will only be enforced when work equipment will be placed in the navigable channel during removal and replacement of the bridge or if necessitated by an emergency, 3) persons or vessels desiring to enter the safety zone may do so with permission from the COTP Sector Northern New England or a designated representative. The Coast Guard will notify the public of the enforcement of this rule via appropriate means, such as via Local Notice to Mariners and Broadcast Notice to Mariners.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A., this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule

would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal

Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section above.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a temporary safety zone that will prohibit entry within 50 yards of the Weskeag Bridge during its removal and replacement. It is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. A Record of Environmental Consideration for Categorically Excluded Actions will be available in the docket where indicated under ADDRESSES.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked

to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165 -- REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5;
Department of Homeland Security Delegation No. 0170.1.

2. Add §165.T01-0791 to read as follows:

§ 165.T01-0791 Safety Zone – Route 73 Weskeag Bridge, Weskeag River, South Thomaston, ME.

(a) Location. The following area is a safety zone. All navigable waters of the Weskeag River, ME within a 50-yard radius of the Route 73 Weskeag Bridge that spans the Weskeag River in South Thomaston, ME in position 44°03'06'' N, 069°07'33'' W (NAD 83).

(b) Effective and enforcement period. This rule will be effective on October 1, 2017, through December 1, 2017, but will only be enforced during removal and replacement of the Route 73 Weskeag Bridge or other instances which may cause a hazard to navigation, when deemed necessary by the Captain of the Port (COTP), Northern New England.

(c) Regulations. When this safety zone is enforced, the following regulations, along with those contained in §165.23 apply:

(1) No person or vessel may enter or remain in this safety zone without the permission of the Captain of the Port (COTP) or a COTP representative. However, any vessel that is granted permission by the COTP or a COTP representative must proceed through the area with caution and operate at a speed no faster than that speed necessary to maintain a safe course, unless otherwise required by the Navigation Rules.

(2) Any person or vessel permitted to enter the safety zone shall comply with the directions and orders of the COTP or a COTP representative. Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing lights, or other means, the operator of a vessel within the zone shall proceed as directed. Any person or vessel within the safety zone shall exit the zone when directed by the COTP or a COTP representative.

(3) To obtain permissions required by this regulation, individuals may reach the COTP or a COTP representative via Channel 16 (VHF-FM) or (207)741-5465 (Sector Northern New England Command Center).

(d) Penalties. Those who violate this section are subject to the penalties set forth in 33 U.S.C. 1232.

(e) Notification. Coast Guard Sector Northern New England will give notice through the Local Notice to Mariners and Broadcast Notice to Mariners for the purpose of enforcement of temporary safety zone. Sector Northern New England will also notify the public to the greatest extent possible of any period in which the Coast Guard will suspend enforcement of this safety zone.

(f) COTP representative. A COTP representative may be any Coast Guard commissioned, or petty officer or any federal, state, or local law enforcement officer who has been designated by the COTP to act on the COTP's behalf. A COTP representative may be on a Coast Guard vessel, a Coast Guard Auxiliary vessel, a state or local law enforcement vessel, or a location on shore.

Dated: September 15, 2017.

M. A. Baroody,
Captain, U.S. Coast Guard,
Captain of the Port,
Sector Northern New England.

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